

## **PUBLIC MEETING MINUTES**

April 12, 2012

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:00 a.m.

### **Members Present**

Anita I. Martinez, Chair  
Alice Dowdin Calvillo, Member  
A. Eugene Huguenin, Member

### **Staff Present**

Wendi L. Ross, Deputy General Counsel  
Les Chisholm, Division Chief, Office of General Counsel  
Shawn Cloughesy, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the February 9, 2012 Public Meeting. She reported that the Board met in continuous closed session to deliberate the pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in February. Those were PERB Decision Nos. 2242-M, 2243, 2244, 2245-I, 2246-M, 2247-M, and 2248-M, and PERB Order No. Ad-393. In Request for Injunctive Relief (IR Request) No. 615 (*San Diego Municipal Employees Association v. City of San Diego*), the request was granted, IR Request No. 616 (*Calexico Unified School District v. Associated Calexico Teachers*), the request was denied, and in IR Request No. 617 (*Deputy City Attorneys Association of San Diego v. City of San Diego*), the request was granted. A document containing a listing of the aforementioned decisions was made available at the meeting. A list containing the decisions is available on PERB's website.

**Motion:** Motion by Member Huguenin and seconded by Member Dowdin Calvillo, to close the February 9, 2012 Public Meeting.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

Without objection, Chair Martinez adjourned the February 9, 2012 Public Meeting. She then opened and called to order the April 12, 2012 Public Meeting. Member Dowdin Calvillo led in the Pledge of Allegiance to the Flag.

## **Minutes**

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Huguenin, that the Board adopt the minutes for the February 9, 2012 Public Meeting.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

## **Comments From Public Participants**

None.

## **Staff Reports**

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

### **a. Administrative Report**

Chief Administrative Officer Eileen Potter reported on the status of the lease renewals in PERB's Oakland and Sacramento offices. She stated that the State Fire Marshall has approved the renewal and acquisition of additional space for PERB's Oakland office. A site tour is to occur at the end of April followed by designs for the floor plan. The lease in that office expires July 31 and will be extended on a month-by-month basis until all tenant improvements have been completed and the new lease executed.

In PERB's Sacramento office, all necessary renewal reports have been submitted to the Department of General Services (DGS) real estate division for review, comment and approval. Contractors for tenant improvements have toured the site and were to submit their bids by Monday, April 9. PERB is awaiting an update from DGS and is on track to complete the processes for lease renewal in this office prior to expiration of the current lease.

Regarding PERB's budget, the agency is currently waiting for the matter to be set for hearing.

### **b. Legal Reports**

Chief Administrative Law Judge Shawn Cloughesy reported on the activities of the Division of Administrative Law and stated that the ALJ report had been distributed to the Board for its review. He reported that hearings are being set within three months from the date of informal conference in all three offices. Compared to last year, statistics for the third quarter in the division are as follows: days of formal hearing conducted are up 44 percent; formal hearings completed are up 103 percent; proposed decisions issued are up 70 percent; and total cases closed is 48 percent. Chief ALJ Cloughesy stated the significance that, also just at the third quarter mark, case closures are at its highest in the division since the MMBA came within PERB's jurisdiction.

Wendi Ross, Deputy General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Ross recapped the following information since the Board's last Public Meeting in February. With respect to unfair practice charges during the months of February and March, 192 new cases were filed with the General Counsel's Office (an increase of 37 from the prior two-month period where the number of cases filed was 155); 176 case investigations were completed (down by 12 cases over the prior period of 188). Ms. Ross noted that in the month of February, the General Counsel's Office saw an end to a year-long run where more cases were disposed of each month than came in the door (100 cases filed, 80 investigations completed), and in March the office was back in the "net plus" column (92 filed, 96 completed). She continued reporting that in the two-month period since the last Public Meeting, a total of 65 informal settlement conferences were conducted by staff (up by 10 over the prior period of 55). As mentioned by the Chair, since the last Board meeting in February, the Board issued determinations in three requests for injunctive relief:

- *San Diego Municipal Employees Association v. City of San Diego*, IR Request No. 615; Charge No. LA-CE-746-M, filed January 31, 2012. This request was granted on February 10, 2012.
- *Calexico Unified School District v. Association of Calexico Teachers*, IR Request No. 616, Charge No. LA-CO-1510-E, filed February 8, 2012. This request was denied on February 15, 2012.
- *Deputy City Attorneys of San Diego v. City of San Diego*, IR Request No. 617; Charge No. LA-CE-752-M, filed February 15, 2012. This request was granted on March 9, 2012, by a majority of the Board, with Member Dowdin Calvillo dissenting.

In terms of litigation relating to PERB, since the February Public Meeting, two new litigation matters were filed:

- *PERB v. City of San Diego (San Diego Municipal Employees Association)*, filed February 14, 2012, San Diego Superior Court Case No. 37-2012-00092205 [PERB Case No. LA-CE-746-M]. On February 15, 2012, PERB filed an Ex Parte Application for a temporary restraining order and an order to show cause (TRO/OSC) re preliminary injunction. After a hearing on February 21, 2012, Judge William S. Dato denied PERB's request for TRO/OSC, without prejudice to refile a motion for preliminary injunction after the election.
- *Boling v. PERB & City of San Diego (San Diego Municipal Employees Association)*, filed March 5, 2012, San Diego Superior Court Case No. 37-2012-00093347 [PERB Case No. LA-CE-746-M]. Plaintiffs filed a complaint on March 5. On March 14, the *Boling* plaintiffs and the City filed an ex parte application for an immediate stay of the PERB administrative proceedings in PERB Case No. LA-CE-746-M. At an ex parte hearing in Department 72 on March 15, Judge Taylor denied the City's and plaintiffs' applications for a stay, and transferred the case to Department 67, to be related with *PERB v. San Diego*. Upon transfer and relation of the two cases, the *Boling* plaintiffs successfully moved to disqualify Judge Dato from any further participation in the matters. On March 27, newly assigned Judge Luis Vargas granted the City's renewed ex parte application for an immediate stay of the PERB

administrative proceedings as to PERB Case No. LA-CE-746-M. On April 11, 2012, the San Diego MEA filed a petition for writ of mandate in the California Court of Appeal for the Fourth Appellate District, Division One, seeking immediate relief from the stay of PERB's administrative proceedings.

Regarding case determinations during the time period since the last Public Meeting, PERB received four final court rulings as follows:

- *CDF Firefighters v. PERB; CalFIRE*, California Court of Appeal, Third Appellate District, Case No. C067592, PERB Decision No. 2162-S [Case No. SA-CE-1735-S]. The Court of Appeal summarily denied the Firefighters' petition on February 9, 2012.
- *County of Riverside v. PERB; SEIU 721*, U.S. Supreme Court, Case No. 11-737. After the California Court of Appeal summarily denied the County's petition in July 2011, and the California Supreme Court summarily denied the County's petition for review in September 2011, the United States Supreme Court denied the County's petition for writ of certiorari on February 21, 2012.
- *Williams & Halcoussis v. PERB; California Faculty Association*, California Court of Appeal, Second Appellate District, Case No. B233494, PERB Decision Nos. 2116-H and 2117-H [Case Nos. LA-CO-501-H, LA-CO-502-H]. Oral argument was held on March 9, 2012, and a final decision from the Court of Appeal, affirming the trial court decision in its entirety, was filed on March 13, 2012. PERB filed a request for publication of the Court of Appeal opinion, which was granted on April 9, 2012.
- *County of Riverside v. PERB; SEIU 721*, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E053161, PERB Decision No. 2163-M [Case No. LA-CE-497-M]. The Court of Appeal summarily denied the County's writ petition on April 11, 2012.

Member Dowdin Calvillo commented about the heavy workload in PERB's Office of the General Counsel. Member Hugenin also commented about the tremendous amount of very high quality work and accomplishments with regard to litigation in that office. Chair Martinez concurred with both statements.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, first reported on rulemaking. He stated that, in addition to the matter on today's agenda related to Assembly Bill 646, PERB staff was formulating a package of other possible revisions, additions, repeal or amendment to PERB regulations over a broad range of topics. The package first would be circulated internally to Board Members and PERB staff for review, comment, questions or suggestions, then externally, starting with the PERB Advisory Committee in a workshop setting. PERB anticipates these processes culminating in a formal rulemaking package that can be submitted to the Office of Administrative Law by the end of the summer or early fall.

Mr. Chisholm reported that the Legislative Report was circulated to the Board for its review. He began his report on the Governor's reorganization plan which added to the Government Code a provision making PERB an agency under the Labor and Workforce Development Agency. Mr. Chisholm informed the Board that the plan is under review by the Little Hoover Commission, public hearings are scheduled April 23, 24 and 25, and the proposal affecting PERB would be heard on April 24. Mr. Chisholm also informed the Board that there would be meetings with regard to the budget proposal that transfers the State Mediation and Conciliation Service to PERB. With regard to legislation, Mr. Chisholm reported the following:

Assembly Bill 1606 (Perea) – Amends MMBA section 3505.4(a) to further clarify when factfinding can be initiated. This bill has passed out of the Assembly Committee on Public Employees, Retirement and Social Security (P.E., R. & S.S.), is in Assembly Appropriations and pending a hearing date.

Assembly Bill 1659 (Butler) – Amends MMBA section 3509 with respect to the County and City of Los Angeles by specifying that those entities are subject to PERB jurisdiction if their established employment relation commissions or boards do not meet the test for independence as defined in the proposed language in this bill. Mr. Chisholm stated that the bill arose out of a dispute in the county from an organizing effort of a certain group of employees. The bill is currently in the Assembly Committee on P.E., R. & S.S. with an anticipated hearing date of April 26.

Assembly Bill 1808 (Williams) – Revises the definition of public employee under the MMBA. The bill is tentatively scheduled for April 26 in the Assembly Committee on P.E., R. & S.S.

Assembly Bill 2328 (Olsen) – Would have eliminated the California Law Revision Commission. The bill failed passage in the Assembly Judiciary Committee.

Assembly Bill 2381 (Hernandez, Roger) – Would bring employees of the Judicial Council, including employees of the Administrative Office of the Courts, under the Ralph C. Dills Act, and would require a separate bargaining unit, or units, for those employees. The bill is in the Assembly Judiciary Committee with an anticipated hearing date of April 26.

Assembly Bill 2573 (Furutani) – Child care provider representation legislation. This bill is set for hearing on April 18 in the Labor and Employment Committee. Mr. Chisholm stated that this legislation is another attempt to bring child care providers under PERB jurisdiction with regard to representation processes, including card checks and annual elections, and also filing unfair practice charges. Mr. Chisholm provided clarification that the child care providers subject to this legislation are contracted with the Department of Social Services.

The Board held discussion regarding Assembly Bill 1808 which revises the definition of public employee under the MMBA.

Member Dowdin Calvillo asked Mr. Chisholm to provide to the Board a copy of the public hearing notice from the Little Hoover Commission. Mr. Chisholm informed the Board that, at Chair Martinez's request, he would appear at the public hearing to answer any questions which might arise regarding PERB's mission and responsibilities.

**Motion:** Motion by Member Huguenin and seconded by Member Dowdin Calvillo that the Legal (including General Counsel and Chief Administrative Law Judge), Administrative, and Legislative Reports be accepted and filed.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

### **Old Business**

None.

### **New Business**

Chair Martinez stated that the Board would consider a staff proposal seeking Board approval for the submission of a proposed rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process regarding the implementation of Assembly Bill 646 (statutes of 2011, Chapter 680). If authorized by the Board, the rulemaking package, including notice of proposed rulemaking, proposed text and initial statement of reasons, would be forwarded to the Office of Administrative Law for review and publication pursuant to the Administrative Procedures Act. In addition, the notice of proposed rulemaking would be distributed by PERB to interested parties and posted on the PERB website. She stated that a public hearing on the proposed regulatory changes would be conducted by the Board at its June 14 Public Meeting. Chair Martinez asked Division Chief Les Chisholm to comment on the staff proposal.

Mr. Chisholm stated that, together with PERB staff Jonathan Levy and Katharine Nyman, a formal rulemaking package had been prepared. He recapped Assembly Bill 646 enacted last year stating that it established a mandatory factfinding procedure under the MMBA that did not exist previously. Emergency regulations had been adopted to enable PERB to fulfill its responsibilities under that legislation beginning as of January 1, 2012. Those regulations are currently in effect and will remain in effect for 180 days following January 1. Mr. Chisholm stated that the regulations would expire unless one of two things happen: (1) complete the regular rulemaking process to adopt the same or different regulations; or (2) request re-adoption of the emergency regulations by the Office of Administrative Law. PERB envisions completion of the rulemaking process within the 180 days by adopting the regulations which are currently in effect with only minor technical corrections. Assuming that the Board approves the staff proposal, the timeline would be as follows: (1) filing with Office of Administrative Law by next Tuesday for publication in the notice register on April 27; (2) PERB would concurrently post copies on its website and the information would also be mailed to interested parties; (3) a 45-day comment period would follow, through June 12, for interested parties to submit written comment; and (4) PERB would hold a public hearing on the proposed rulemaking at its June 14 Public Meeting where appearance or written comments could also be received. Mr. Chisholm concluded that the rationale for adoption of the regulatory changes and additions are the same as it was for the emergency regulations.

**Motion:** Motion by Member Huguenin and seconded by Member Dowdin Calvillo to forward the proposed rulemaking package to the Office of Administrative Law for review and publication.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

**General Discussion**

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through June 14, 2012 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Huguenin to recess the meeting to continuous closed session.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Anita I. Martinez, Chair